

HOMER LEE et al., etc.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

No. 360

COURT OF APPEALS OF MARYLAND

May 7, 1964

The County Board of Appeals of Baltimore County denied a petition for reclassification of some 17 acres of land to a residence-apartment zone. The Circuit Court for Baltimore County, John Grason Turnbull, J., entered an order affirming the board's decision, and appeal was taken. The Court of Appeals, Henderson, J., held that evidence sustained the board's finding.

Order affirmed.

1. Zoning --- 652

Evidence sustained finding of county board of appeals in zoning case denying petition for reclassification of 17 acres of land to residence-apartment zone.

2. Zoning --- 605

It is duty of county board of appeals to zone and not duty of courts.

3. Appeal and Error --- 123

Appeal does not lie from opinion of trial court but only from action taken by trial court, since trial court may be right for wrong reason.

Before BRUNIE, C.J., and HENDERSON, HAMMOND, PRESIDENT and MARRBY, J.J.

HENDERSON, Judge.

This appeal is from an order affirming a decision of the County Board of Appeals in a zoning case denying the appellants' petition for reclassification of some 17 acres of land on Joppa Road east of Charles Street Avenue, from R-6 and R-20 to an R-A (residence, apartment) zone, with a special exception for an elevator apartment as to about 9 acres of the property. The action of the Board, as set out in its written opinion, was based on its findings that the appellant failed to prove that there had been a sufficient change in the character of the neighborhood to warrant a reclassification, and that the decision to zone the property R-6 and R-20, at the time of the adoption of the Ninth District Map on November 18, 1955, was correct. The Board further found that to rezone the southern portion zoned R-20 and fronting on Joppa Road would be "inconceivable," since Joppa Road "is a narrow, winding country type road, rural in its character, carrying heavy school traffic and many school buses." As to the northernmost portion, it found that the fact that property to the north, separated by a wooded ridge, had been rezoned R-A was not controlling (Cf. Levy v. Seven Slade, Inc. 234 Md. 145,

198 A.2d 267, 272), and that the "subject tract is correctly zoned and could be properly developed under its present classification." Since the Board found no occasion to classify, the special exception was obviously not in order.

(1) Without summarizing the evidence pro and con, including those portions reproduced in the transcript but not in the appendix to the appellants' brief, we think it supports the findings of the Board. Mr. Dill, called as an expert by the appellants, admitted that the property could be developed in one acre lots, the prevailing pattern in the neighborhood, although he testified that a high rise apartment would be the highest and best use. It was shown that there had been some changes in the neighborhood incident to the opening of the Beltway to the north and the widening of Charles Street Avenue, and that this had necessitated the reclassification of certain landlocked property. There was testimony, however, that these changes did not effect the property in question. On the whole, we think the issues of fact presented were fairly debatable, and therefore the affirmance of the Board by the trial court should be sustained.

(2,3) The appellants' brief and argument in this Court were predicated almost wholly upon the opinion of the trial court. After an examination upon the desirability of high rise apartments the trial court remarked that if he had authority to zone he would reverse the Board "as quick as a whizzer." He affirmed the Board, however, on the independent finding that the appellant failed to establish that adequate provision had been made for water and sewerage. The appellants' brief is devoted to the contention that the trial court was in error in its findings as to water and sewerage the question remains as to whether the Board's findings were supportable. It is the Board's duty to zone, and not the court's. Moreover, an appeal does not lie from an opinion of a trial court, but only from the action taken. Holmes v. Shattuck, 222 Md. 558, 374, 180 A.2d 302; Brennan v. Roth, 212 Md. 491, 497, 156 A.2d 301, and cases cited. A trial court may be right for the wrong reason. Allegheny Corp. v. Alabaster Corp., 173 Md. 472, 478, 196 A. 410.

We heretofore denied the petition of Ernest C. Trimble, attorney for the protestants, for leave to appear as amicus curiae. In view of our decision in favor of the protestants we find it unnecessary to state our reasons.

Order affirmed, with costs.

DR. HOMER LEE, JANE A. LEE and BOWEN P. WEINHEIT, Attorney-In-Fact

Plaintiffs

vs.

NATHAN H. KAUFMAN, JR., G. MITCHELL AUSTIN and CHARLES STEINBOCK, JR., constituting the County Board of Appeals of Baltimore County

Defendants

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

ORDER FOR APPEAL

Mr. Clerk:

Please note an Appeal on behalf of DR. HOMER LEE, JANE A. LEE, his wife, and BOWEN P. WEINHEIT, their attorney-in-fact, from the Opinion and Order of the County Board of Appeals of Baltimore County, dated October 1, 1963, and signed by Nathan H. Kaufman, Jr., Chairman, and G. Mitchell Austin, member, of the aforesaid County Board of Appeals of Baltimore County, in the Case bearing No. 5782-RN being a Petition for Zoning Reclassification and Special Exception for an Elevator Apartment Building as to a part of the land therein petitioned for with said reclassification being from R-6 and R-20 Zones to an R-A Zone with Special Exception A, as a part thereof for an Elevator Apartment Building as more particularly described in the proceedings referred to.

The property subject to this Order for Appeal is all that property as described in the original Petition for Zoning Reclassification and Special Exception as filed by the Plaintiffs herein and as is briefly identified as being 17,720 acres of land more or less located at or near the Southeast corner of the intersection of Kenilworth Drive and Charles Street Avenue Extended and extending therefrom in a southerly direction along the East side of Charles Street Avenue Extended to the North side of Joppa Road, all located in the Ninth Election District of Baltimore County, State of Maryland. This Appeal

DR. HOMER LEE, JANE A. LEE and BOWEN P. WEINHEIT, Attorney-In-Fact, Plaintiffs

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Case No. 2086

Misc. Docket No. 7

Folio No. 208

NATHAN H. KAUFMAN, JR., G. MITCHELL AUSTIN and CHARLES STEINBOCK, JR., constituting the County Board of Appeals of Baltimore County, Defendants

JUDGMENT AND ORDER (Filed December 10, 1963)

After review of the trial transcript, examination of the exhibits, consideration of briefs presented, argument of counsel for Petitioner-Appellant and of Protestants below and when relating proper legal precedent and stare decisis to the record in this proceeding, this Court is of the firm belief and conviction that the Petitioner-Appellant based on the evidence presented was entitled to the Zoning Reclassification and the Special Exception as requested; that a reasonable mind considering the whole record could arrive at no other conclusion; that the Opinion rendered by the County Board of Appeals in Case No. 5782-RN [this Case] was arbitrary, capricious and improper and totally unsupported by the whole record; BUT HOWEVER, even though the Opinion of the County Board of Appeals is silent on the point and therefore presumably all any required evidentiary burden on the Petitioner-Appellant had been satisfied, this Court believes it is bound to and so does find under the authority of *Parsons French Land Co. v. The Co. Comm. of B. & O. R.R.*, 104 Md. 610 (1907), *Overholt v. The B. & O. R.R.*, unreported, (11/13/63) and *White v. St. El. & P. R.R. Co.*, unreported, (11/13/63) that the provisions of Sec. 1(c) as amended to "... regulate provisions for ... water, sewerage ..." have been manifestly established by the evidence and therefore it is this Court's order that the Circuit Court for Baltimore County do hereby

December by the Circuit Court for Baltimore County O. C. - 5782-RN

is from the denial of the Petition for Reclassification and also from the denial of the Petition for Special Exception all as more particularly stated in the herein referred to Opinion and Order of the said Board of Appeals.

This Appeal is filed in accordance with Rule B2 and Rule B4 and other provisions of the Maryland Rules of Procedure.

J. ELMER WEINHEIT, JR.

J. Elmer Weinheit, Jr., 101 Jefferson Building, Towson, Maryland 21204, Valley 3-1011, Attorney for Plaintiffs

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that a copy of the foregoing Order for Appeal was served on the County Board of Appeals by delivery by me to said Board at its office in the County Office Building, Towson, Maryland, and which service was effected prior to the filing of the said Order for Appeal: all in accordance with the requirements of Rule B2(c) "Service on Agency" of the aforesaid Maryland Rules of Procedure and this certification is made as the "Certificate of Compliance" required by said Section of said Maryland Rules.

J. ELMER WEINHEIT, JR.

J. Elmer Weinheit, Jr., 101 Jefferson Building, Towson, Maryland 21204, Valley 3-1011, Attorney for Plaintiffs

that this Petition for Zoning Reclassification and for Special Exception is denied and the Order only of the County Board of Appeals dated October 1, 1963, affirmed.

John Grason Turnbull, Judge

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY AT LAW

Case No. 2086

Misc. Docket No. 7

Folio No. 208

DR. HOMER LEE, JANE A. LEE and BOWEN P. WEINHEIT, Attorney-In-Fact, Plaintiffs

vs.

NATHAN H. KAUFMAN, JR., G. MITCHELL AUSTIN and CHARLES STEINBOCK, JR., constituting the County Board of Appeals of Baltimore County, Defendants

ORDER TO DOCKET APPEAL

Mr. Clerk:

Please docket an Appeal to the Court of Appeals of Maryland in the above entitled cause from the final Order of Judge John Grason Turnbull, dated December 10, 1963, in this cause.

J. Elmer Weinheit, Jr., 101 Jefferson Building, Towson, Maryland 21204, Valley 3-1011, Counsel for Plaintiffs-Appellants

LEE & COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY MD. 130
Case No. 100-130-130

J. Elmer Whitaker, Jr. and Edward C. Crowley, Jr., Town, for appellants.
No appearance for appellee.
Before BRINE, C. J., and HENDERSON, HAMMOND, PRESICOTT and MARIURY, JJ.

HENDERSON, Judge.

This appeal is from an order affirming a decision of the County Board of Appeals in a zoning case denying the applicant's petition for reclassification of some 17 acres of land on Joppa Road east of Charles Street Avenue, from R-4 and R-20 to an R-4 (residence, apartment) zone, with a special exception for an elevator, as to about 9 acres of the property. The action of the Board, as set out in its written opinion, was based on its findings that the applicant failed to prove that there had been a sufficient change in the character of the neighborhood to warrant a reclassification, and that the decision to move the property R-4 and R-20 at the time of the adoption of the Sixth District Map on November 14, 1955, was correct. The Board further found that to remove the southern portion named R-20 and leaving on Joppa Road would be "unreasonable" since Joppa Road "is a narrow, winding country type road, rural in its character, carrying heavy school traffic and many school buses." As to the northern portion, it found that the fact that property to the north, separated by a wooded ridge, had been zoned R-4, was controlling (Cf. Lewis v. State, Inc., 244 Md. 145, 196 A.2d 262, 272), and that the "subject tract is a recently platted and could be properly developed under its present classification." Since the Board found no occasion to rehear, its special decision was obviously not in error.

1. Zoning C-602
Evidence showed finding of county board of appeals in zoning case denying petition for reclassification of 17 acres of land to residence-apartment zone.

2. Zoning C-608
It is duty of county board of appeals to zone and not duty of courts.

3. Appeal and Error C-123
Appeal does not lie from opinion of trial court but only from action taken by trial court, since trial court may be right for wrong reason.

Without summarizing the evidence given and not, including the evidence given in the hearing, but not in the appendix to the applicant's brief, we think it supports the findings of the Board. Mr. [Name], called as an expert by the appellants, admitted that the property could be developed in one way, but the prevailing pattern in the neighborhood, although he testified that a high rise apartment would be the highest and best use. It was shown that there had been some changes in the neighborhood in the opening of the Baltimore to the north and the widening of Charles Street Avenue, and that this had necessitated the reclassification of certain landlocked property. There was testimony, however, that these changes did not affect the property in question. On the whole, we think the times of fact presented were fairly debatable, and therefore the action of the Board by the trial court should be sustained.

Order affirmed.

County Board of Appeals of Baltimore County
No. 130
Court of Appeals of Maryland
May 2, 1966

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

To: Bowen Whitaker
22 E. 52nd Street
Baltimore 15, Md.

INVOICE No. 15433
DATE 1/10/63

REPORT TO ACCOUNT NO. 01.622

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
1	Petition for Reclassification & Special Exception for Dr. Homer Lee	\$50.00
3		70.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: 2/3/63

Posted for: Special Exception for Elevator App. Building including...

Petitioner: Dr. Homer Lee et al.

Location of property: N/S of Joppa Rd. opp. Madison Drive & Shumwood Ave. & the E/S of Charles Street & the W/S of Stenwick Ave.

Location of Signs: 1/2 mile from intersection of Joppa Rd. & Joppa Rd. & the E/S of Charles Street & the W/S of Stenwick Ave.

Remarks: 3 signs

Posted by: [Signature] Date of return: 2/1/63

200 ATLANTIC REPORTER, M. ERIE
No. 273
Court of Appeals of Maryland
May 11, 1964

Joseph A. MATTINGLY et al.
Charles W. HOUTSON et al.
No. 273
Court of Appeals of Maryland
May 11, 1964

Purchasers brought suit against vendors for reformation of deed for certain lots in a subdivision. The Circuit Court for Montgomery County, Kathryn J. Shook, J., entered an order adverse to the vendors and the vendors appealed. The Court of Appeals, Sybert, J., held that clear, strong and convincing evidence sustained the finding of the chancellor that through a mutual mistake, caused by error of engineers in placing pipes, deed did not convey what the purchasers intended to buy and what the vendors intended to sell.

Order affirmed.

1. Reformation of Instruments C-653
Clear, strong, and convincing evidence sustained finding of chancellor that through mutual mistake, caused by error of engineers in placing pipes, deed did not convey what purchasers intended to buy and what vendors intended to sell, so as to entitle purchasers to reformation of deed for certain lots in subdivision.

2. Evidence C-602
Admissibility of photographs is largely in discretion of trial court.

3. Appeal and Error C-123(1)
Exclusion of photograph of front portion of land in question is ground for reversal of deed did not constitute ground for reversal, where appellee did not show prejudice of injury.

William M. Carley, Belleville (Att'n B. Blumberg and Miller, Miller & Carley, Rockville, on the brief), for appellants.

Order affirmed, with costs.

Order affirmed.

County Board of Appeals of Baltimore County
No. 130
Court of Appeals of Maryland
May 2, 1966

Mr. George A. Reier
Page Two
February 19, 1963

St. Mary Sewer Comments

Recent improvements have been made to the Worley's Run Sanitary Sewer to provide temporary capacity for the sewage flows being pumped from the Dulany Valley area. Further improvements are in progress.

When the Minebank-Gumpower Master System is completed, the Dulany Valley flows will no longer be pumped to the Worley's Run System and there will be an excess capacity available in this area.

In the interim, however, the development of properties in the Worley's Run area at higher densities than those reflected by zoning when the Worley's Run reinforcement was designed, will contribute to conditions adverse to the public health and welfare.

INVOICE
BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE
Division of Collection and Receipts
COURT HOUSE
TOWSON 4, MARYLAND

To: J. Elmer Whitaker, Jr., Esq.,
The Jefferson Bldg.,
Towson 15, Md.

INVOICE No. 16537
DATE 4/2/63

REPORT TO ACCOUNT NO. 01.622

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
1	Advertising & posting of property for Dr. Homer Lee	168.00
3		18.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
PLEASE RETURN UPPER SECTION OF THIS BILL WITH YOUR REMITTANCE.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: 2/3/63

Posted for: Reclassification from R-4 & R-20 to R-4

Petitioner: Dr. Homer Lee et al.

Location of property: N/S of Joppa Rd. opp. Madison Drive & Shumwood Ave. & the E/S of Charles Street & the W/S of Stenwick Ave.

Location of Signs: 1/2 mile from intersection of Joppa Rd. & Joppa Rd. & the E/S of Charles Street & the W/S of Stenwick Ave.

Remarks: 3 signs

Posted by: [Signature] Date of return: 2/1/63

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Towson 15, Md.

INVOICE No. 16537
DATE 4/2/63

REPORT TO ACCOUNT NO. 01.622

QUANTITY	DETACH UPPER SECTION AND RETURN WITH YOUR REMITTANCE	TOTAL AMOUNT
1	Cost of appeal in matter of property of Dr. Homer Lee	70.00
3		70.00

IMPORTANT: MAKE CHECKS PAYABLE TO BALTIMORE COUNTY, MARYLAND
MAIL TO DIVISION OF COLLECTION & RECEIPTS, COURT HOUSE, TOWSON 4, MARYLAND
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Remarks: 3 signs

Posted by: [Signature] Date of return: 2/1/63

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: George A. Ruler Date: February 15, 1962

FROM: Elsworth N. Diver

SUBJECT: Zoning Petition 5782X
Dr. Homer Lee Property
N. S. Joppa Road Shadow Ridge
District 9

In reply to your memo of February 15, 1962, the following are our comments regarding water and sewer service for the subject property:

Water Supply Comments

A previous study by the Analyzer Office indicated that under peak demand conditions, the existing main in Joppa Road is presently unable to supply the area at an acceptable residual pressure. In order to supply the subject property, which itself represents a peak demand of about 0.2 MGD, extensive improvements would first have to be completed. Primary among the needed reinforcements would be the proposed main in West Third Avenue and its connection to the existing main in old Charles Street Avenue. Secondly, a minimum 12-inch main would be necessary in Joppa Road from Chestnut Avenue to the subject property (approximately 300 ft.). It is anticipated that these improvements would render the distribution system adequate to meet the expected domestic demands as well as fire demands.

An alternate source of supply for this area is available from the north, where there is a 12-inch main in Bellona Avenue, from which an 8-inch main extends along Kenilworth Avenue to the north of the property. This system is adequate to serve the lower elevations of the property. The lower floor of the proposed 13-story building is apparently at about elevation 125, which can be served at adequate pressure from Bellona Avenue. Of course, an internal pumping system will be required to serve the upper floors of the building.

One of the inherent weaknesses of the area is the lack of an adequate loop closure between Joppa Road and Bellona Avenue main. This closure should be made in connection with the apartment project, thereby lending further strength to the system supplying the units along Joppa Road.

The severity of the fire protection inadequacy of the existing system is pointed out in the attached Analyzer report prepared in January, 1962, in connection with a proposed increase in demand at the subject property, to the east of the apartment site.



FOR PETITION FOR RECLASSIFICATION FROM
"R-6" and "R-20" Zones to "R-4"
Zone and Special Exception for
Elevator Apartment Buildings,
Dr. Homer Lee and Jane A. Lee
Petitioners - Parks Engineering
Co., Contract Purchaser -
No. 5782-X

AMEND the next to last paragraph of Order dated March 18, 1962,
to read as follows:

The remaining portion of the property petitioned to be
reclassified is continued as and to remain an "R-20" Zone.

Zoning Commissioner of
Baltimore County

Date: March 20, 1962

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 9th Date of Posting: July 2, 1962

Posted for: Reclassification from "R-6" and "R-20" to "R-4" Zone
Special Exception for Elevator Apartment Buildings

Petitioner: Dr. Homer Lee and Jane A. Lee

Location of property: N. S. Joppa Rd., E. of Charles Street Avenue and E. E. 2

Charles E. Lee, Esq., Elsworth N. Diver

Location of Signs: Subdivision of Charles Street and Kenilworth Drive
on the left side of the road between the two streets

Remarks: [Signature]

Posted by: [Signature] Date of return: July 1, 1962

PETITION FOR ZONING RE-CLASSIFICATION
AND/OR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

DR. HOMER LEE and JANE A. LEE, his wife, by Bowen Weisheit, their
Attorney-in-fact, of the property situate in Baltimore
County and which is described in the description and plat attached hereto and made a part hereof,
herby petition (1) that the zoning status of the herein described property be reclassified, pursuant
to the Zoning Law of Baltimore County, from ~~an~~ R-6 and R-20 zones ~~to~~ to an
R-4 Zone, as stated ~~on the following pages~~ below, and for the following
reasons:

- (1) From an R-6 and R-20 zone to an R-4 zone (description attached), for
approved and permissible uses in such zone;

See Attached Description

and (2) for a Special Exception, under the said Zoning Law and Zoning Regulations of Baltimore
County, to use the herein described ~~property~~ properties (description attached) for...

Elevator Apartment Buildings including accessory business uses for the convenience
of the tenants, as defined in Section 215.3 of the said Zoning Regulations.
Property is to be posted and advertised as prescribed by Zoning Regulations.

We, agree to pay expenses of above reclassification and/or Special Exception advertising,
posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning
regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore
County.

PARKS ENGINEERING CO. DR. HOMER LEE and JANE A. LEE
BY: Bowen Weisheit BY: Bowen Weisheit
Bowen Weisheit - Contract purchaser Their Attorney-in-fact - Legal Owners
Address: 32 E. 25th Street Address: 32 E. 25th Street
Baltimore 18, Maryland Baltimore 18, Maryland

J. Elmer Weisheit, Petitioner's Attorney
Jr.
Address: 101 Jefferson Building
Towson 4, Md. - Vailley 3-1011

ORDERED By The Zoning Commissioner of Baltimore County, this ~~6th~~
day of ~~January~~ ~~1962~~ that the subject matter of this petition be advertised, as
required by the Zoning Law of Baltimore County, in two newspapers of general circulation through-
out Baltimore County, that property be posted, and that the public hearing be had before the Zoning
Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore
County, on the ~~21st~~ day of ~~February~~ ~~1962~~ at 11:00 o'clock

A. M. JAN-8-63
Zoning Commissioner of Baltimore County



(over)

JOSEPH D. THOMPSON, P.E.A.L.S.
CIVIL ENGINEERS & LAND SURVEYORS

1150 101 SHELL BUILDING - 200 EAST JOPPA ROAD
TOWSON - 4 - MARYLAND - VAILLEY 3-8820

JANE HOMER LEE and HUSBAND

Description of property to be rezoned from R-6 and R-20 to R-4

BEGINNING for the same at a stone marked "A" heretofore planted at the end of
the second or South 65-1/4 degrees East 59 perch line of that tract of land which by deed dated
March 5, 1890 and recorded among the Land Records of Baltimore County in Liber J.W.S. No.
178, folio 595, etc., was conveyed by Charles F. Pitt, Jr., et al to George W. Abell said
stone being also at the end of the twelfth line of that tract of land which by deed dated August
1, 1891 and recorded among the Land Records of Baltimore County in Liber J.W.S. No. 187,
folio 235, etc., was conveyed by John A. Worley to George W. Abell and running thence from
said beginning and binding on the said twelfth line of the lastly described deed reversely North
53 degrees 54 minutes 51 seconds East 42.98 feet to the center of a woods road there situate
and to the southeast corner of Flat Two, Section Three, "ORCHARD HILLS" as filed among the
Land Records of Baltimore County in Plat Book No. 23, folio 71 and running thence binding on
the center of said woods road and on the northernmost outline of the secondly described deed
and on the southernmost outline of said Flat Two, Section Three, "ORCHARD HILLS" and on the
southernmost outline of Flat One, Section Three, "ORCHARD HILLS" as filed among the Land
Records of Baltimore County in Plat Book No. 23, folio 71 the ten following courses and distances
North 55 degrees 58 minutes 13 seconds West 99.92 feet, North 61 degrees 17 minutes 13
seconds West 170.22 feet, North 68 degrees 24 minutes 13 seconds West 141.69 feet, North
61 degrees 13 minutes 13 seconds West 253.75 feet, North 56 degrees 00 minutes 13 seconds
West 99.92 feet, North 66 degrees 45 minutes 13 seconds West 141.02 feet, North 60 degrees
23 minutes 13 seconds West 321.12 feet, North 45 degrees 57 minutes 13 seconds West 249.10
feet, North 52 degrees 05 minutes 13 seconds, West 82.84 feet and North 59 degrees 04 minutes

JOSEPH D. THOMPSON, P.E.A.L.S.
CIVIL ENGINEERS & LAND SURVEYORS

1150 101 SHELL BUILDING - 200 EAST JOPPA ROAD
TOWSON - 4 - MARYLAND - VAILLEY 3-8820

50 minutes 31 seconds East 59.49 feet) and South 71 degrees 41 minutes 00 seconds East
142.52 feet, thence crossing said Joppa Road, as shown on said Plat, South 18 degrees 19
minutes 00 seconds West 70.00 feet to the south side thereof, thence along the south side of
said Road, South 73 degrees 13 minutes 55 seconds East 245.69 feet to the end of the fourth
line of the firstly described deed, thence binding in the bed of said Joppa Road and on the
fourth line of said firstly described deed reversely South 68 degrees 05 minutes 09 seconds
East 704.55 feet to the beginning thereof, thence leaving the said Joppa Road and binding on
the third line of said firstly described deed reversely North 53 degrees 54 minutes 51 seconds
East 292.05 feet to the place of beginning.

CONTAINING 17.730 acres of land more or less.

SUBJECT however to that portion of the bed of Joppa Road lying within the confines
of the above description.

SUBJECT also to the easement area at the southeast corner of Charles Street Avenue
and Kenilworth Drive (Bellona Avenue, south) as shown on said Rights of Way Plat No. 16330
as prepared by the State Roads Commission of Maryland.

SUBJECT also to the easement area for outlet ditch on the north side of Joppa Road
as shown on Rights of Way Plat No. 16329 as prepared by the State Roads Commission of
Maryland.

BEING part of each of the following parcels of land which were conveyed to George
W. Abell by the following Deeds, viz:

JOSEPH D. THOMPSON, P.E.A.L.S.
CIVIL ENGINEERS & LAND SURVEYORS

1150 101 SHELL BUILDING - 200 EAST JOPPA ROAD
TOWSON - 4 - MARYLAND - VAILLEY 3-8820

13 seconds West 2.87 feet to the southwest corner of said Flat One, Section Three, "ORCHARD
HILLS" thence leaving said outline of said Flat One, Section Three, "ORCHARD HILLS" and
binding on the center of said woods road and on the northernmost outline of the secondly
described deed the three following courses and distances North 59 degrees 04 minutes 13 seconds
West 222.31 feet, North 65 degrees 49 minutes 31 seconds, West 109.05 feet and North 78
degrees 49 minutes 20 seconds West 90.16 feet to the southernmost side of Kenilworth Drive
(or Bellona Avenue, south) as laid out 80 feet wide and shown on Rights of Way Plat No. 16330
as prepared by the State Roads Commission of Maryland, thence running with and binding on the
southernmost side of said Drive as shown on said Plat South 86 degrees 08 minutes 27 seconds
West 88.06 feet to the Easternmost side of Charles Street Avenue, as shown on said Plat, thence
running with and binding on the easternmost side of said Avenue, as shown on said Plat the five
following courses and distances, South 17 degrees 37 minutes 57 seconds West 112.23 feet,
South 18 degrees 21 minutes 03 seconds East 111.81 feet, South 5 degrees 49 minutes 06 seconds
East 103.08 feet, South 6 degrees 12 minutes 57 seconds West 200.12 feet and South 6 degrees
29 minutes 57 seconds West 100.04 feet to the northernmost side of Joppa Road as shown on
Rights of Way Plat No. 16329 as prepared by the State Roads Commission of Maryland, thence
running with and binding on the northernmost side of said Road, as shown on said Plat, the five
following courses and distances South 78 degrees 41 minutes 46 seconds East 76.64 feet, easterly
by a line curving to the south with a radius of 1507.40 feet for a distance of 315.71 feet (the
chord of said arc being South 83 degrees 58 minutes 58 seconds East 315.13 feet), South 6 de-
grees 30 minutes 46 seconds East 107.29 feet, southeasterly by a line curving to the north with
a radius of 1482.40 feet for a distance of 59.49 feet (the chord of said arc being South 72 degrees

JOSEPH D. THOMPSON, P.E.A.L.S.
CIVIL ENGINEERS & LAND SURVEYORS

1150 101 SHELL BUILDING - 200 EAST JOPPA ROAD
TOWSON - 4 - MARYLAND - VAILLEY 3-8820

1. Dated March 5, 1890 and recorded among the Land Records of Baltimore
County in Liber J.W.S. No. 178, folio 593, etc., from Charles F. Pitt, Jr. and wife, and
2. Dated March 5, 1890 and recorded among the Land Records of Baltimore County
in Liber J.W.S. No. 178, folio 595, etc., from Charles F. Pitt, Jr., et al and
3. Dated August 1, 1891 and recorded among the Land Records of Baltimore County
in Liber J.W.S. No. 187, folio 235, etc., from John A. Worley.

12-28-62



Joseph D. Thompson

SALES & LEGAL NOTICES

PETITION FOR ZONING RECLASSIFICATION

RE: PETITION FOR ZONING RECLASSIFICATION
FROM: Dr. Homer Lee and Jane A. Lee, Petitioners
TO: The Board of Appeals, Baltimore County
SUBJECT: Zoning Petition No. 5782-RX
DATE: March 11, 1963
FILED: March 11, 1963
BY: Albert B. Kaltenbach, Clerk of the Board of Appeals

STATE OF PUBLICATION

THE COUNTY NEWS WEEK
 Published in Towson, Baltimore County, Maryland
 Successive weeks before the first of February, 1963, the first day of February, 1963

THE COUNTY NEWS WEEK

W. J. Hays
 Manager

R.A. SPECIAL EXCEPTION

Beginning for the same as a special exception, a petition was filed on March 11, 1963, by Dr. Homer Lee and Jane A. Lee, Petitioners, for a special exception to the "R-6" Zoning Ordinance of Baltimore County, Maryland, to allow the construction of a two-story apartment building on the north side of Joppa Road, east of Charles Street Avenue, and also property to be rezoned from "R-6" and "R-2" to "R-6" and a special exception for Elevator Apartment Buildings, including accessory business uses for the convenience of its tenants to be located on the east side of Charles Street Avenue and the north side of Kenilworth Drive.

This hearing consisted of two days of testimony and a great many points were raised. Basically, however, the requested zoning changes are based on a zoning map adopted by the County Commissioners of Baltimore County on November 12, 1955. Since that time the Zoning Commissioner and the Baltimore County Board of Appeals have authorized various changes.

In the area of Charles Street Avenue and Kenilworth Drive, south of the Baltimore County Beltway, the Zoning Commissioner and the County Board of Appeals have formed a consistent pattern. No changes have been made along Joppa Road in this vicinity.

The pattern was set as follows:
 The County Board of Appeals in Petition No. 1457

Reference is made to an interoffice memorandum from Mr. Ellsworth N. Diver, Chief, Bureau of Engineering, to Mr. George A. Reier, Deputy Chief, Bureau of Public Services dated February 19 concerning the availability of sewer and water for the above property which is the subject of a rezoning petition from residential to apartment zoning.

Please be advised that we have reviewed the comments made in that petition concerning water and sewer facilities and we wish to clarify that memorandum as follows.

Water Supply:
 The property is on a severe slope. The lower portions of this tract can be served from the water supply system to the north via Bellona Avenue. As was stated in the memorandum of February 19, the alternative supply for the area is available off the 12-inch main in Bellona Avenue and the 8-inch connecting main in Kenilworth Avenue. Sufficient quantities of water are available from this location to serve ground elevations between 425 and 475.

In order to serve the higher portions of the area, reinforcements in Joppa Road and Burke Avenue will be required.

With respect to the problem of completing needed reinforcements, it should be pointed out that these reinforcements are being planned in connection with the St. Josephs Hospital and the Greater Baltimore Medical Center. It can

RE: PETITION FOR ZONING RECLASSIFICATION
FROM: Dr. Homer Lee and Jane A. Lee, Petitioners
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SUBJECT: Zoning Petition No. 5782-RX
DATE: March 11, 1963
FILED: March 11, 1963
BY: Albert B. Kaltenbach, Clerk of the Board of Appeals

The petitioners, Dr. Homer Lee and Jane A. Lee, legal owners, and Parks Engineering Company, a wholly owned subsidiary of Walker-Dunlop, petitioned to have property rezoned from "R-6" Zone and "R-2" Zone to an "R-6" Zone located on the north side of Joppa Road east of Charles Street Avenue and also property to be rezoned from "R-6" and "R-2" to "R-6" and a special exception for Elevator Apartment Buildings, including accessory business uses for the convenience of its tenants to be located on the east side of Charles Street Avenue and the north side of Kenilworth Drive.

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Basically, however, the requested zoning changes are based on a zoning map adopted by the County Commissioners of Baltimore County on November 12, 1955. Since that time the Zoning Commissioner and the Baltimore County Board of Appeals have authorized various changes.

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 The County Board of Appeals in Petition No. 1457

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Board of Appeals
FROM: Albert B. Kaltenbach
SUBJECT: Zoning Petition No. 5782-RX
 Dr. Homer Lee Property
 NS Joppa Road at Meadow Ridge

Reference is made to an interoffice memorandum from Mr. Ellsworth N. Diver, Chief, Bureau of Engineering, to Mr. George A. Reier, Deputy Chief, Bureau of Public Services dated February 19 concerning the availability of sewer and water for the above property which is the subject of a rezoning petition from residential to apartment zoning.

Please be advised that we have reviewed the comments made in that petition concerning water and sewer facilities and we wish to clarify that memorandum as follows.

Water Supply:
 The property is on a severe slope. The lower portions of this tract can be served from the water supply system to the north via Bellona Avenue. As was stated in the memorandum of February 19, the alternative supply for the area is available off the 12-inch main in Bellona Avenue and the 8-inch connecting main in Kenilworth Avenue. Sufficient quantities of water are available from this location to serve ground elevations between 425 and 475.

In order to serve the higher portions of the area, reinforcements in Joppa Road and Burke Avenue will be required.

With respect to the problem of completing needed reinforcements, it should be pointed out that these reinforcements are being planned in connection with the St. Josephs Hospital and the Greater Baltimore Medical Center. It can

south side of Dennington Circle 277 feet west of Kenilworth Drive:

The Board has considered the impact on this property which has resulted from the completion of the new Charles Street extension and has also considered the ever increasing demand for apartment zoning in Baltimore County. Neither of these conditions could have been properly contemplated by the County Commissioners of Baltimore County in the adoption of the Land Use Map for the Sixth District on November 12, 1955.

In conclusion the Board feels that the development of this property for garden type apartments will not have a detrimental effect on the surrounding area. Further, that apartment use is compatible with the overall plan for this area which deny the petition would be a denial to the property owner of the proper use of his land.

The County Board of Appeals in Petition No. 1455, north side of Bellona Avenue and west side of Charles Street Avenue stated:

"The particular location of the property makes operation of the Baltimore County Beltway a prime consideration in the decision to follow. The subject tract sits below ground level of the Baltimore County Beltway in an uneven topography."

Testimony was given by Mr. Malcolm H. Dill, Director of Planning for Baltimore County, that for the peculiar type terrain and topography, apartments would be appropriate. Mr. Dill also testified that there would be no problem of traffic congestion if this petition were granted. The Board also heard testimony that under the present zoning with its relation to the Baltimore County Beltway, the utility of the property for cottage type developments is destroyed. It would be impracticable and economically unfeasible because of the topography and the closeness to the Baltimore County Beltway to develop said property in cottages. Dr. Frederick F. Kluwe, an expert realtor and appraiser, gave testimony that in his opinion there had been an error in the original zoning in that the completion of the Baltimore County Beltway had an unforeseeable impact upon the subject property.

The Board concurs with the Petitioners' contentions in this matter and finds that for the aforesaid reasons that there has been an error in the original zoning and the Board feels justified in a reclassification of the "R-6" use as the most suitable and compatible use of the property.

The Zoning Commissioner in Petition 5502, south side of Kenilworth Drive, 130 feet east of Charles Street Avenue, granted additional "R-6" zoning touching Petition 1457 on Dennington Circle.

For the above reasons only the following described property should be granted from an "R-6" Zone to an "R-6" Zone:

John G. Rose
 Re: Zoning Petition 5782-RX
 Dr. Homer Lee Property
 March 11, 1963
 Page 2

be expected that the needed reinforcements will be completed within one year. With regard to the extension of the 12-inch main in Joppa Road to the subject property, required to serve the higher areas, it would be necessary for this property as well as those to the north which are proposed for apartment units will contribute toward the construction cost of this main in the form of area connection charges in order to obtain adequate services.

Sanitary Sewers:

The memorandum of February 19 referred to the fact that further development of properties in Worleys Run at higher densities than those originally planned, would create adverse conditions. It should be pointed out that certain flows are being diverted from the Minebank, Gunpowder, Dulany Valley system which will not be permanently handled by Worleys Run. Further, the statement contained therein was predicated on the assumption that all of the developments presently proposed for rezoning as well as those which have already been rezoned, would be impacted upon the system prior to the provision of any reinforcements being provided in the downstream sections.

It is our opinion that control can be exercised by the Department of Public Works of the rate at which property, even though rezoned, can be connected into the sewer or water supply systems. Further, where new developments are permitted on existing systems, financing is arranged to permit, where practicable, the reinforcement of such sections of the systems as are required to carry the additional sewage flows.

All that parcel of land beginning for the same on the south side of Kenilworth Drive at a point distant 100 feet measured easterly along said south side from the center line of Charles Street Avenue, thence running the following courses and distances:

South 7° 37' 57" West 112.23 feet
 " 18° 21' 03" East 111.01 feet
 " 5° 19' 06" East 60.00 feet
 thence running in a southeasterly direction a distance of 650 feet to a point,
 Thence S 15° 07' 13" West 100.00 feet
 " 55° 05' 13" West 82.40 feet
 " 59° 01' 13" West 2.87 feet
 " 59° 01' 13" West 222.31 feet
 " 65° 19' 11" West 109.75 feet
 " 78° 19' 20" West 30.65 feet
 " 86° 00' 27" West 88.06 feet

to the place of beginning.

Being part of land recorded among the Land Records of Baltimore County in Liber J.M.C. No. 178, folios 593 and 595, also Liber J.M.C. No. 187 folio 235.

It is this 18th day of March, 1963, by the Zoning Commissioner of Baltimore County, ORDERED THAT the property described in the foregoing description should be and the same is hereby reclassified from an "R-6" Zone to an "R-6" Zone, subject, however, to approval of the site plan by the State Roads Commission, Bureau of Public Services and the Office of Planning and Zoning.

The remaining portion of the property petitioned to be reclassified is continued as to and remain "R-6" and "R-2" Zones.

The Special Exception for Elevator Apartment Buildings, including accessory business uses for the convenience of the tenants, as defined in Section 215.5 of said Zoning Regulations is REVOKED.

Albert B. Kaltenbach
 Zoning Clerk of Baltimore County

John G. Rose
 Re: Zoning Petition 5782-RX
 Dr. Homer Lee Property
 March 11, 1963
 Page 3

In this instance, for example, the capacity of the lower reaches of the Jones Falls Interceptor is considerably in excess of that presently planned to be carried within the existing limits of the developed area province of the Department of Public Works to commit upon the propriety of rezoning but we do feel that it is our duty when called upon to indicate the problems involved in development of property affecting utilities. In this case, we believe that it would be practicable to reinforce certain downstream sections as required in order to permit rezoning not only of the subject tract but of other tracts within the vicinity which have already been rezoned.

Albert B. Kaltenbach
 ALBERT B. KALTENBACH
 Director, Department of Public Works

ABK JBW dcs
 cc G.A. Reier
 E.N. Diver

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: George A. Reier Date: February 15, 1963

FROM: Ellsworth A. Diver

SUBJECT: Zoning Petition 5782-X
Dr. Homer Lee Property
N. S. Joppa Road Westside Ridge
District 9

In reply to your memo of February 15, 1963, the following are our comments regarding water and sewer service for the subject property:

Water Supply Comments

A previous study by the Analyzer Office indicated that under peak demand conditions, the existing main in Joppa Road is presently unable to supply the area at an acceptable residual pressure. In order to supply the subject property, which itself represents a peak demand of about 0.2 MGD, extensive reinforcements would first have to be completed. Primary among the needed reinforcements would be the proposed main in West Joppa Avenue and its connection to the existing main in old Charles Street Avenue. Secondly, a minimum 12-inch main would be necessary in Joppa Road from Chestnut Avenue to the subject property (approximately 300 ft.). It is anticipated that these improvements would provide the distribution system adequate to meet the expected domestic demands as well as fire demands.

An alternate source of supply for this area is available from the north, where there is a 12-inch main in Bellona Avenue, from which an 8-inch main extends along Kenilworth Avenue to the north of the property. This system is adequate to serve the lower elevations of the property. The lower floor of the proposed 3-story building is presently at about elevation 125, which can be served at adequate pressure from Bellona Avenue. Of course, an internal pumping system will be required to serve the upper floors of the building.

One of the inherent weaknesses of the area is the lack of an adequate loop closure between Joppa Road and Bellona Avenue main. This closure should be made in connection with the apartment project, thereby leading further strength to the system supplying the units along Joppa Road.

The security of the fire protection inadequacy of the existing system is pointed out in the attached Analyzer report prepared in January, 1963, in connection with a proposed increase in demand at 11-600 and 11-600 property, to the east of the apartment site.



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John O. Reier, Zoning Commissioner Date: February 8, 1963

FROM: George H. Garverly, Deputy Director

SUBJECT: #5782
9th District

HEARING: Thursday, February 21, 1963 (11:00 A.M.)

page -2-

order to ~~fulfill~~ fulfill its role as a community collector street leading Central Town on the east and the Jones Falls Expressway on the west.

3. There are other elements, particularly those related to site planning on this difficult piece of topography, which should be considered. These are difficult to cover in the written comments; they will be covered in verbal testimony at the hearing.

GB:bm

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John O. Reier, Zoning Commissioner Date: November 2, 1962

FROM: Mr. George H. Garverly, Deputy Director

SUBJECT: #5694, R-20 to R-A. North side of Joppa Road opposite Meadow Ridge Road. Being property of Dr. Homer Lee.

9th District

HEARING: Wednesday, November 14, 1962 (2:00 P.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R-20 to R-A zoning and has the following advisory comments to make with respect to pertinent planning factors:

1. The subject property is situated within an immediate neighborhood which is characterized as a large-scale, single family residential area within which institutional uses occur. It is separated very distinctly from the smaller single family lots and the apartment zoning located to the north. The separation is provided by the northerly slope of the Joppa Road ridge which produces differences of topography within the subject property of 60 feet or more with grades of 30 percent or more. The physical barrier resulting from these slopes very definitely separates, from a planning viewpoint, the land use potentials of the subject property from those to the north and distinctly relates the use of this property with other properties which do depend upon Joppa Road for their access. The character context of land usage here is that of single family residences on larger lots.
2. Unlike the apartment area in the southwestern quadrant of the Charles Street - Beltway Interchange, the subject property has no direct access or connection with a major road other than Joppa Road. Access to Charles Street would have to be via Buxton Ridge - a single family residential area or by means of Greenwood Avenue - an area with larger lot single family use potentials.

GB:bm

MEMORANDUM

TO: Mr. John F. Loe, Chief, Water Design Group, BCDM

FROM: The Analyzer Office

SUBJECT: A study of the requested increase in demand by the Mission Helpers of the Sacred Heart in the Town of Fourth Zone.

The Mission Helpers of the Sacred Heart, located on Joppa Road, 750 feet west of Chestnut Avenue, have requested an additional peak demand of 190 gpm (0.27 MGD). The Bureau records indicate that the present average use by this consumer is less than 6 gpm (0.009 MGD), which is being supplied by a 6-inch main in Joppa Road, except for a section of 12-inch main between Chestnut Avenue and Charles Street. The ground elevation on Joppa Road at this property is 458 feet. The attached drawing shows a sketch of the general area and the existing hydraulic losses.

Existing analyzer studies of the Town of Fourth Zone under 1960 peak-hour demands of 28.5 MGD indicate a hydraulic loss of 36 feet to the intersection of Joppa Road and Chestnut Avenue. The resulting pressure at a ground elevation of 498 feet is about 20 psi, based on a peak-hour gradient of 600 feet at the Town Pumping Station. The addition of the 0.27 MGD demand would lower the pressure to about 20 psi. The present demand being so small, the available fire flow practically would be the additional 190 gpm at the same 20 psi.

If 750 feet of the 6-inch main in Joppa Road were replaced with a 12-inch main (from Chestnut Avenue west), the available fire flow would be increased to about 0.55 MGD (380 gpm) at a 20 psi residual, or the peak domestic demand of 190 gpm could be supplied at a 25 psi residual. Even if Joppa Road were reinforced with a 12-inch main from Charles Street eastward to the subject property, where a 12-inch main exists, the pressure along Joppa Road would not be substantially increased, since the head loss to Joppa Road and the subject property under present peak demand is about 30 feet or just 6 feet less than the loss to Joppa Road and Chestnut Avenue.

Further reinforcement for the Joppa Road area could be obtained if a main were constructed in Charles Street south from Chestnut Avenue to the 12-inch main recommended for the Greater Baltimore Medical Center in a memorandum by the Analyzer Office, dated December 12, 1961. But, due to the high elevations along Joppa Road and the resulting low allowable head losses, the pressure along Joppa Road would not be increased substantially although the flow would be supplemented.

The requested increase of 190 gpm peak demand by the Mission Helpers of the Sacred Heart could be supplied at a residual pressure of about 25 psi (at elevation 498 feet), during the peak hour in the Fourth Zone, if 750 feet of 6-inch main in Joppa Road west of Chestnut Avenue were replaced with a 12-inch main. This improvement would allow a fire flow alone of about 380 gpm (0.55 MGD) at a 20 psi residual. Further reinforcement by one or both of the methods mentioned above would allow increases in the available fire flow, and would provide small increases in pressure. A major increase in pressure could not be obtained unless further improvements were made between the Town Pumping Station and Joppa Road.

A study on the analyzer would be necessary to determine accurately the effect of adding new loops in the Joppa Road area.

VS/BS
January 12, 1963

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Mr. John O. Reier, Zoning Commissioner Date: February 8, 1963

FROM: Mr. George H. Garverly, Deputy Director

SUBJECT: #5782-X, R-6 and R-20 to R-A and Special Exception for Elevator Apartments including accessory business uses for the convenience of its tenants. Northside of Joppa Road East of Charles St. Ave. and Eastside of Charles St. Ave. and North side of North Drive. Being property of Dr. Homer Lee.

9th District

HEARING: Thursday, February 21, 1963 (11:00 A.M.)

The staff of the Office of Planning and Zoning has reviewed the subject petition for reclassification from R-6 and R-20 to R-A zoning together with a Special Exception for an elevator apartment building with accessory business uses. It has the following advisory comments to make with respect to pertinent planning factors:

1. Examination of the property in the field as well as review of topographic maps indicates that the subject property is divisible into three separate areas:
 - a) The northwesterly portion of the property which contains a gently-sloping shelf, is contiguous to existing apartment development, and access to which is possible only from Charles Street at Kenilworth and by way of the existing access roads leading to the Garden Apartments.
 - b) The Joppa Road frontage, a plateau and the intervening steep slope.
 - c) The southeasterly portion of the property which is practically adjacent to the subject property, it appears from a planning viewpoint that apartment zoning for the northern portion of the property is appropriate because it has direct access to Charles Street just south of the Beltway Interchange and because of its relationship to the adjoining apartments. The land forms indicate that development of this portion of the property for an elevator apartment as petitioned for is a realistic means of using the property and preserving the major portion of its natural wooded slopes.
2. Immediate access to the plateau along Joppa Road can only be from that road. Access to Charles Street to the north is practically impossible. Access to Charles Street southward from the Joppa Road frontage of this property leaves a great deal to be desired. Access is possible by means of Greenwood Road on the east and through the Buxton Ridge development to the west. The extreme narrowness of the Greenwood Road present at present and that only two or three developed properties are dependent upon it at this time. The access through Buxton Ridge development involves use of streets winding through larger lot development. The ultimate potential for improved access could conceivably include a widened Greenwood Road as well as a provision of more direct access to Charles Street through still undeveloped acreage located at the southeast corner of Joppa Road and Charles Street. Although not in the present Capital Program Joppa Road must be widened in

RE: PETITION FOR RECLASSIFICATION : BEFORE

FROM: "R-6" and "R-20" Zones to an : COUNTY BOARD OF APPEALS

SUBJECT: "R-A" Zone, and SPECIAL : OF

EXCEPTION for Elevator Apartment : BALTIMORE COUNTY

Buildings, : No. 5782-X

N/S Joppa Road east of Charles Street : Dr. Homer Lee, et al,

Avenue, and E/S Charles Street Avenue, : Petitioners

S/S Kenilworth Drive : :

9th District : :

OPINION

This is the petition of Dr. Homer Lee, et al, for reclassification of property from "R-6" and "R-20" Zones to an "R-A" Zone, and a special exception for elevator apartment buildings on property located on the north side of Joppa Road east of Charles Street Avenue, and on the east side of Charles Street Avenue and the south side of Kenilworth Drive in the Ninth District of Baltimore County.

In reviewing the testimony presented to the Board it is the unanimous opinion of the Board of Appeals that this testimony failed to prove that there has been sufficient change in the character of the neighborhood to warrant a reclassification and, further, that the decision of the County Commissioners in zoning the property "R-6" and "R-20" at the time of the adoption of the Ninth District map on November 14, 1955 was correct.

With regard to the southern most portion of the property zoned "R-20" and fronting on the Joppa Road, it is inconceivable to zone this property "R-A". Joppa Road is a narrow winding country type road, rural in its character, carrying heavy school traffic and many school buses. To reclassify this property to the high density allowed in an "R-A" classification would seem to this Board to be suicidal.

With regard to the northern most part of the property a small part of which is zoned "R-6" and the balance zoned "R-20", this major portion of this property has a very steep grade and it is heavily wooded at the present time. The petitioner lays great stress on the fact that the property immediately to the north was rezoned to "R-A" which now exists the garden-type Kenilworth Apartments. This Board does not feel that the existence of the Kenilworth Apartments have had a detrimental effect on the subject property, and that it can be developed in its present "R-20" and "R-6" classification. To take the position that the rezoning of one piece of property to "R-A", in itself, requires that contiguous properties be rezoned "R-A" is a grave error in the opinion of this Board. If this was true we could have large areas with nothing but apartment after apartment, after apartment. This does not seem to be logical zoning or good planning. The Board

is of the opinion that the subject tract is correctly zoned and could be properly developed under its present classification.

It is, therefore, the unanimous opinion of the Board of Appeals that the petition for reclassification be denied. With regard to the special exception for an elevator apartment building, this is a moot question in light of the Board's decision to deny the reclassification.

ORDER

For the reasons set forth in the foregoing Opinion, it is this 15th day of October, 1963 by the County Board of Appeals, ORDERED that the reclassification and special exception petitioned for, be and the same is hereby denied.

Any appeal from this decision must be in accordance with Chapter 1100, subtitle B of Maryland Rules of Procedure, 1961 edition.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

CHAIRMAN

9. Mitchell, Pres.

NOTE: Mr. Steinback did not sit at this hearing.

RE: Petition for Reclassification and Special Exception
for Elevator Apartment Buildings - N. S. Joppa Road,
East of Charles Street Ave., Dr. Homer Lee and Jane
A. Lee, Petitioners - Parks Engineering Co., Contract
Purchaser - No. 5782-RX

Please note an appeal to the County Board of Appeals from your Order dated March 18, 1963, as amended by your Supplemental Order dated March 20, 1963, each passed in the above captioned matter.

J. Elmer Weisheit, Jr.
Attorney for Applicants

Mr. Bowen P. Weisheit
Brooklandville, Maryland

Mr. Evans Smith
c/o Mr. Walter Koppelman, Jr.
Walker & Dunlop, Inc.
Fidelity Building
Baltimore 1, Maryland

December 2, 1963

THE COURT: Gentlemen, as I told you last week

I have read the entire record. I have also read the papers which have been filed since our consultation last week. As to, the petitions to intervene and the answers attached thereto, and the Appellants' respective motions to rescind and to strike as to all attempted intervenors, and the petition to appear as amicus curiae -- which, Mr. Campbell, has not been stamped as having been filed, and I would suggest that when you take the papers

The Court will reserve ruling on those matters until the close of the arguments. I am going to permit Mr. Ennor and Mr. Trimble to argue, and at the close of the arguments I will give a specific ruling so that each side will know precisely how the record stands with regard to the petitions to intervene and the petition to act as amicus curiae.

(Counsel made arguments to the Court.)

THE COURT: As you gentlemen know, it is not my function to zone or rezone. It is my function simply to rule upon the issues of law presented to me and to rule upon whether or not the action of the Board was arbitrary, capricious or illegal and whether or not the action of the Board was supported by reasonable testimony upon which it could have reached the conclusion which it did.

Now, as to the preliminary questions of law.
On the petitions to intervene by The Institute of Mission

Now, we get to the matter of whether or not the Board acted in an arbitrary, illegal or capricious manner. I was very much interested the other day to read in the newspapers the county executive's comments about

In proper places a high rise apartment is a tremendous asset to the County. It is known that in apartments of that type the school population which is developed is minimal. It is also perfectly obvious that in high rise apartments of that type the drain upon the taxpayer for police protection, fire protection is also minimal, indeed, practically non-existent. The hysteria which arises as to every application for a high rise apartment is something which I just do not understand. It is another example of the fact that people wish to preserve the status quo by requiring their neighbor to

Now, there can be no question -- forgetting original error in the land use map, there can be no question that in this immediate neighborhood, since the adoption of the land use map, there have been substantial changes, including the high rise apartment now being erected, the, I think they call them the Kenilworth Apartments, the extension of Charles Street which, according to Mr. Wolf's

As to the petition filed by Mr. Pittman through Mr. Trimble asking for leave to appear as amicus curiae, it is obvious on the face of the matter that the petition, in reality, is a petition of an interested party represented by the same attorney who represented certain of the protestants, and that it is not a true amicus curiae situation but that it is a situation where, as Mr. Trimble very frankly points out in his brief, it is a situation

In the Borhage case, the Board of Zoning Appeals -- in both of those cases the Board of Zoning Appeals had granted applications for special exceptions; in the Borhage case for special exception for a nursing home -- and I know that Mr. Ensor and Mr. Weisheit, I think probably all counsel

1 know this place very well; it's at the corner of LaPaix
2 Lane and York Road, where George Davis used to live years
3 ago, Mr. Smor -- and in the testimony in that case relative
4 to traffic problems it was stated that the applicant
5 voluntarily would widen that part of LaPaix Lane which
6 immediately adjoined the applicant's property to the extent
7 of 30 feet. The testimony was that if that were done
8 there would be no traffic problem.

9 The Board granted the application. The Court
10 of Appeals reversed it and said there was no assurance
11 that it would be done, there was no contract to assure
12 the widening, and that it was the Board's duty not to
13 grant an application for a special exception under cir-
14 cumstances wherein the Board was not absolutely assured
15 that that would be done which would eliminate the objection
16 to the special exception.

17 The same thing, the same point came up in the
18 Gerszak case. That was an application for a special
19 exception for a trailer park in an M-L zone. It was a
20 question of access to the property, and the existing
21 access was a narrow, winding road. The applicant produced

1 a representative of the Pennsylvania Railroad Company,
2 who
3 which owned the bed of the road, and indicated that the
4 Pennsylvania Railroad Company would have no objection to
5 the applicant widening the road.

6 But there again the Court of Appeals reversed,
7 saying:

8 "The Board stated at one point that it
9 agreed with counsel for the protestants that
10 it would not grant the special exception upon
11 condition that the petitioner pave and widen
12 Philadelphia Avenue, but went on to say that
13 it had a legal right to grant the petition
14 based on the provision that Philadelphia
15 Avenue be widened 50 feet. We think this is
16 a distinction without a difference. There
17 was no showing that anyone other than the
18 petitioner had any intention of widening the
19 road, and to grant the petition contingent
20 upon the road being widened by some undisclosed
21 person would be even more objectionable than
22 to grant it contingent upon action by the
23 petitioner.

24 "We have held that zoning authorities
25 may not require a developer to defray the cost
26 of public improvements beyond the boundaries
27 of his own property 50 feet. This does not mean
28 that the developer may not validly contract
29 to do so. But the duty of the Board, to make
30 certain that adequate access is provided, is
31 not satisfied by a vague showing of permissive
32 use or indefinite future expectation."

33 Now, unfortunately, in this case the testimony

1 is uncontradicted by Mr. Wolff, who is, concededly, an
2 expert witness -- beginning on page 161, line 61

3 QUESTION: "Mr. Wolff, would you state whether or not
4 sanitary sewers are presently available for outfall pur-
5 poses from the subject tract, and explain your answer?"

6 ANSWER: "Yes. Physically sanitary sewer facilities are
7 available. However, the sewer is overloaded at the present
8 time. There are sections of the system that have been
9 reinforced over the past two years. There are plans in
10 process to reinforce ---" -- and there is an objection, and
11 so on, lots of comments by the Board, and so forth -- then,
12 by Mr. Wolff, at the bottom of Page 162: "You will find
13 that recommendation is being made at the present time by
14 the Department of Public Works."

15 Then, page 163, by Mr. Kaufman: "With regard
16 to sewer, are there any plans in Baltimore County at the
17 present time which have gone to the point where money has
18 been appropriated for plans in connection with the sewer
19 condition on this subject property?" ANSWER: "The answer
20 on that specifically is no, but --" -- then there is some
21 more colloquy, which is not evidence, talking about how

1 the petitioner could cooperate in the sewer situation, and
2 so forth, talking about bond issues, that kind of thing.

3 Then we get back down, on page 170: "Now Mr.

4 Wolff, is there a water line in Joppa Road immediately
5 adjacent to this property?" ANSWER: "Yes." QUESTION:

6 "Is there a water line in Kenilworth Road, immediately
7 adjacent to this property?" ANSWER: "Yes." QUESTION:

8 "Therefore there is water available to service this

9 property?" ANSWER: "Yes." QUESTION: "Are there any

10 conditions which you as an expert in the field of engineering

11 would recommend that the owner of this property cause to

12 have done in order to improve the water service available

13 at this time to this property?" ANSWER: "Yes." QUESTION:

14 "What are those?" ANSWER: "There are one or two things.

15 One would be to extend the 12-inch main off Chestnut Avenue

16 and Joppa, in Joppa Road, to the edge of the property, and

17 to obtain service from the fourth zone of service by means

18 of this reinforcing extension, because it requires that

19 sort of size, possibly cross-sectioned to Donington Circle, to

20 give an adequate service to the proposed rezoned property.

21 "Alternatively, it would be possible to extend from the

1 termination of West Road, a 12-inch main, in the proposed
2 right of way for Kenilworth Drive, to tie with the exist-
3 ing line in Kenilworth." QUESTION, by Mr. Austin: "Am I
4 to understand that water is available to the property,
5 but it is insufficient?" ANSWER: "That is correct."

6 Again, on the question of traffic, there was
7 some testimony of a proposition to extend Kenilworth Drive
8 to hook into West Avenue -- I forget whose testimony that
9 was -- and thereby get a direct connection to the York
10 Road. But as I read the record, in order to do that it
11 would be necessary to cross a portion of the property of
12 The Mission Halmers and the Hanley property, which lie
13 northerly of the Joppa Road, and, obviously, the petitioner
14 is in no position to say that kind of thing shall be done.

15 I frankly think it is a mistake, and it is
16 something that I don't like doing, but I am bound by what
17 the Court of Appeals has said in these cases: "But the
18 duty of the Board, to make certain that adequate access is
19 provided, is not satisfied by a vague showing of permissive
20 use or indefinite future expectation." Substitute for the
21 word "access" the words "water and sewer" and you have a

1 quotation which fits this case as a glove fits a hand.

2 Gentlemen, because of that, I reluctantly must
3 affirm the action of the Board.

4 MR. WEISHEIT: Could I be heard for just one
5 minute, your Honor?

6 THE COURT: Yes.

7 MR. WEISHEIT: In any case of that sort, obviously,

8 it is impossible for any use to be made of the property
9 until a building permit is granted by the engineering
10 authorities of Baltimore County; therefore, in the public
11 interest, absolute, positive precaution is assured by law,
12 and it is impossible for any use of this property to be
13 made until such time as water and sewer is available, if
14 it is not in fact now available. When you --

15 THE COURT: Mr. Weisheit, that is the same
16 theory upon which I affirmed the Board in the Bonage case
17 and the Gerszak case, to wit, that the building permits
18 would not be issued unless the matter were taken care of,
19 and regardless of the permit, the special permit, that no
20 building would be erected and no trailer camp erected
21 unless the conditions were met. Now, that was the theory

1 upon which I affirmed the Board in both of those cases.
2 But the Court of Appeals agreed with me.

3 There is nothing, however, as the Court of
4 Appeals points out, to prevent the applicant from entering
5 into a proper public works agreement with the County,
6 subject to the applicant getting the zoning which it
7 requests, so that if the zoning is granted then the appli-
8 cant would be contractually bound to perform; whereas,
9 under the facts of this case, the applicant is not con-
10 tractually bound to perform.

11 MR. WEISHEIT: Sir, are we speaking about the
12 reclassification for --

13 THE COURT: All of it.

14 MR. WEISHEIT: All of it?

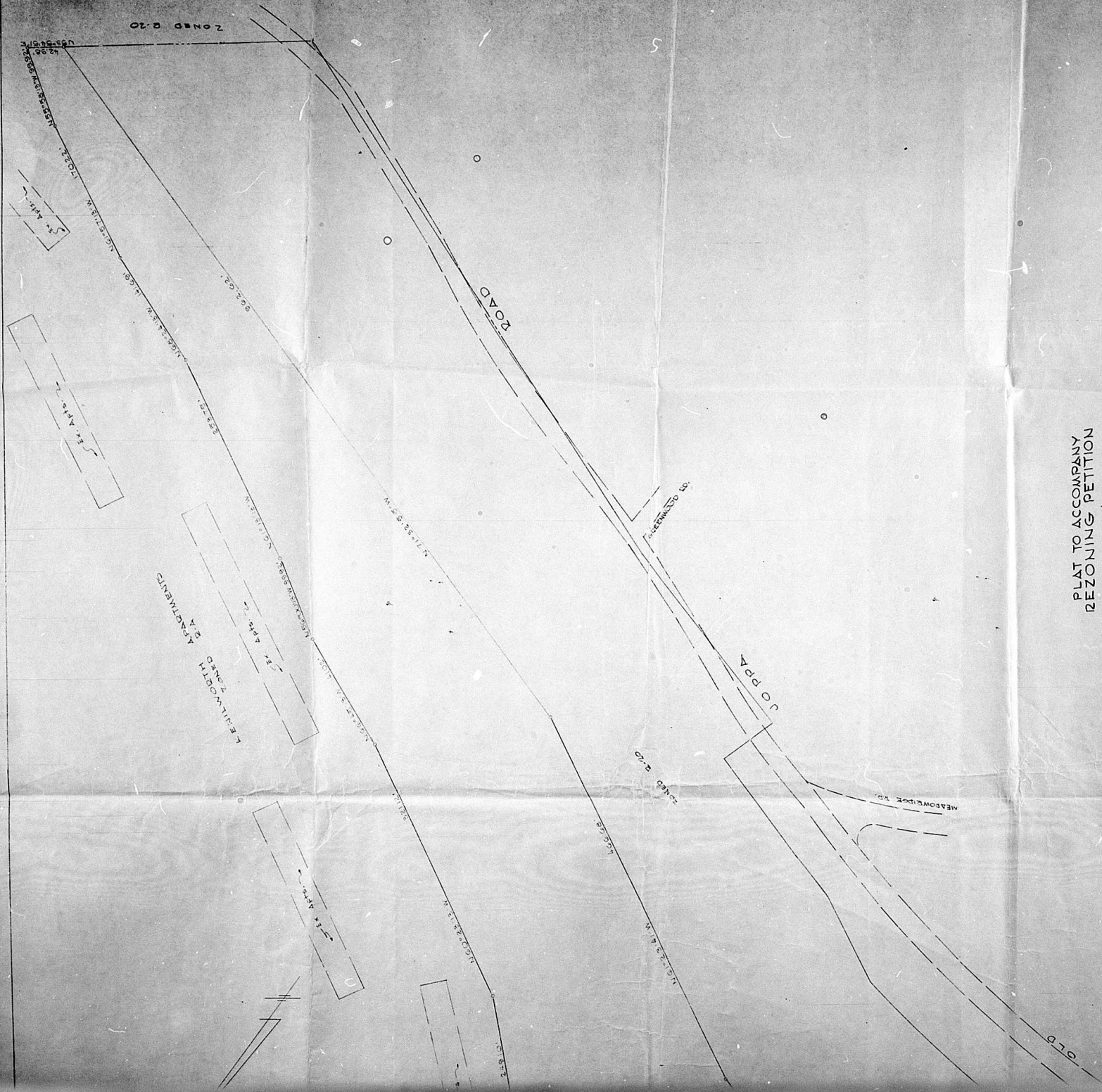
15 THE COURT: Yes, sir.

16 MR. WEISHEIT: Then, in effect, the Court's
17 ruling is the same as if we had been asking for a reclassifi-
18 cation to any change from what is there now, as far as
19 residential density.

20 THE COURT: Provided the testimony was the
21 same, to wit, that the water --

1 MR. WEISHEIT: In other words, requiring a
2 tie in to a public sewer.

3 THE COURT: Yes. I am sorry. I really would
4 like very very much to go with you, and if it hadn't been
5 for the fact that I received copies of the Court of Appeals
6 opinions in these two cases where they reversed me, if I
7 had heard this case prior to getting those I would have
8 reversed the Board.



PLAT TO ACCOMPANY
REZONING PETITION
JOPPA RD. & CHARLES ST.

9TH ELECTION DIST. BALTIMORE CO. MD.
SCALE: 1"=50' JANUARY 2, 1952

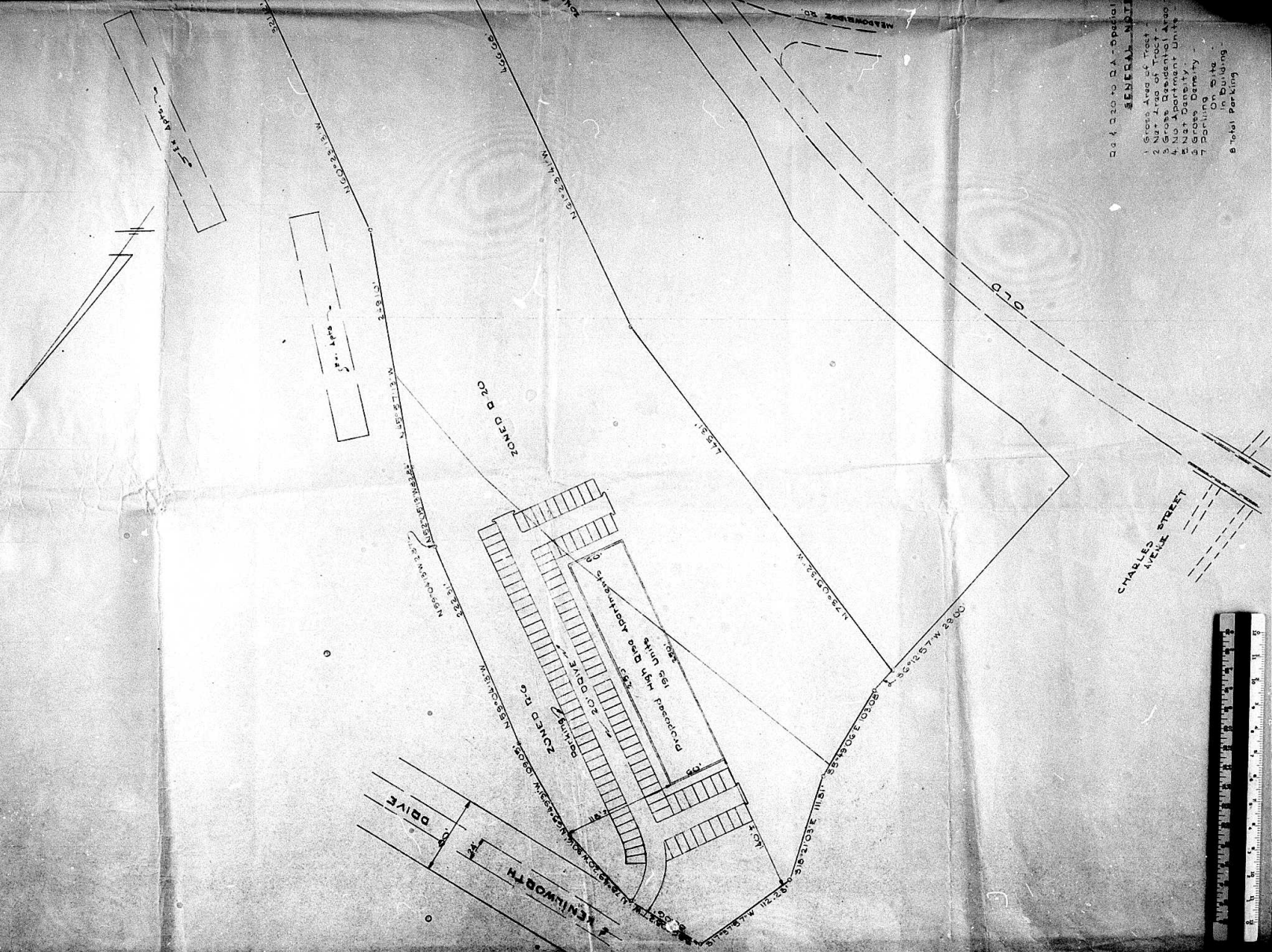
024 32010 0A - Special Exception

GENERAL NOTES

1 Gross Area of Tract	208,441
2 Gross Area of Rezoning Area	9,604.1
3 Gross Area of Residential Area	9,604.1
4 No Apartment Units	195
5 Net Density	195
6 Gross Density	191
7 Ratio of Site	109
8 Ratio of Building	113
9 Ratio of Parking	113



JOSEPH D. THOMPSON
ENGINEER & SURVEYOR
200 E. JOPPA RD.
TOWSON, MD.
REG. NO. 1190



204 220 TO DA - Special
GENERAL NOTE
 1 Gross Area of Tract -
 2 Net Area of Tract -
 3 Gross Area of Tract -
 4 Gross Area of Tract -
 5 Net Density -
 6 Gross Density -
 7 Parking Site
 8 Total Parking
 in Building

